

1 FUTTERMAN & DUPREE LLP
MARTIN H. DODD (104363)
2 JAMIE L. DUPREE (158105)
160 Sansome Street, 17th Floor
3 San Francisco, California 94104
Telephone: (415) 399-3840
4 Facsimile: (415) 399-3838
martin@dfdlaw.com
5 jdupree@dfdlaw.com

6 *Attorneys for Defendant*
Robert Sillen, individually and
7 as Receiver

8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION

12
13 MEDICAL DEVELOPMENT
INTERNATIONAL, a Delaware corporation,

14 *Plaintiff,*

15 v.

16 CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION,
ROBERT SILLEN, individually and as
18 Receiver,

19 *Defendants.*

Case No.

**NOTICE OF REMOVAL OF ACTION:
UNDER 28 U.S.C. §1442(a)(1),(3)**

20
21 TO THE CLERK OF THE COURT:

22 PLEASE TAKE NOTICE that defendant Robert Sillen hereby removes to this Court the
23 state court action described below.

- 24 1. On September 17, 2007 an action was commenced in the Superior Court of the State of
25 California in and for the County of Sacramento, entitled *Medical Development*
26 *International, a Delaware corporation, Plaintiff v. California Department of Corrections*
27 *and Rehabilitation, Robert Sillen, individually and as Receiver, and Does 1-, Defendants,*
28 Case No. 07AS0456. A true and correct copy of the complaint in the above matter is

1 attached hereto as Exhibit A. A true and correct copy of the summons is attached hereto
 2 as Exhibit B. The remainder of the State court file is attached as Exhibit C.

3 2. The first date upon which defendant received a copy of the complaint was on or about
 4 September 20, 2007, when defendant obtained a copy of the summons and complaint by
 5 facsimile transmission from attorneys for plaintiff.

6 3. **Jurisdiction In This Court.** This action is a civil action which may be removed
 7 pursuant to the provisions of 28 U.S.C. §1442(a)(1), (3) in that (i) Sillen is the Receiver
 8 of the California prison medical care system, appointed by the Hon. Thelton E.
 9 Henderson, U.S. District Judge, on February 14, 2006, in *Plata, et al. v. Schwarzenegger,*
 10 *et al.*, U.S. Dist. Ct., (N.D.Cal.) No. C01-1391 TEH; (ii) as Receiver, Sillen is an officer
 11 and agent of the *Plata* court; and, (iii) the acts Sillen is alleged to have committed were
 12 undertaken "under color of office or in the performance of his duties" for which he has
 13 absolute immunity as a matter of federal law and pursuant to the order appointing him.
 14 *Ely Valley Mines, Inc. v. Hartford Acc. & Indem. Co.*, 644 F.2d 1310, 1313-1316 (9th Cir.
 15 1981).

16 4. The Receiver has an independent basis upon which to remove, and therefore consent to
 17 removal from the other defendants is unnecessary. *Id.* at 1314-1316; *see also Durham v.*
 18 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252-1253 (9th Cir. 2006); *Akin v. United States*,
 19 156 F.3d 1030, 1034-1035 (10th Cir. 1998); *Ortiz v. General Motors Accept. Corp.*, 583
 20 F.Supp. 526, 530 (N.D. Ill. 1984).

21
 22 Dated: October 16, 2007

FUTTERMAN & DUPREE LLP

23
 24 By: /s/
 25 Martin H. Dodd
 26 Attorneys for Defendant Robert Sillen
 27
 28

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On October 16, 2007, I served a copy of the following document(s):

NOTICE OF REMOVAL OF ACTION: UNDER 28 U.S.C. §1442(a)(1),(3)

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

— BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.

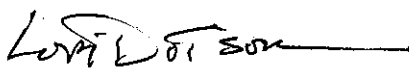
X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

— BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

— BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

Bennett J. Lee
Garrett E. Dillon
David R. Chamberlin
Watt, Tieder, Hoffar & Fitzgerald, LLP
Citigroup Center
One Sansome Street, Suite 1050
San Francisco, CA 94104

Dated: October 16, 2007


Lori Dotson